

ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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JAN - 8 2004

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
(Magnolia, Arkansas and Oil City, Louisiana) )

MB Docket No. 02-199  
RM-10514

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Marlene H. Dortch, Office of the Secretary  
Attn: Chief, Audio Division  
Media Bureau

**REQUEST FOR EXPEDITED ACTION**

Cumulus Licensing LLC<sup>1</sup> ("Cumulus"), transferee of Station KVMA-FM, and Columbia Broadcasting Co., Inc. ("Columbia"), licensee of Station KVMA-FM, by their counsel, hereby request expedited consideration and action in the above-captioned proceeding.

1. In the *Report and Order* in this proceeding,<sup>2</sup> the Commission deleted Channel 300C1 at Magnolia, Arkansas and allotted Channel 300C2 to Oil City, Louisiana as that community's first local aural transmission service, and modified the license of Station KVMA-FM to reflect the change of community. A petition for reconsideration of the *Report and Order* was filed on June 13, 2003. An opposition and reply were timely filed. Cumulus has filed an application to implement the *Report and Order*, specifically indicating its willingness to accept a grant conditioned on the final outcome of this proceeding.<sup>3</sup>

2. This is a simple allotment proceeding clearly falling within established precedent. The pleading cycle on reconsideration is complete. The processing of Cumulus' implementing

<sup>1</sup> The name of this entity has changed, effective January 2, 2004

<sup>2</sup> *Magnolia, Arkansas and Oil City, Louisiana*, 18 FCC Rcd 8542 (2003).

<sup>3</sup> File No. BPH-20030610ADI

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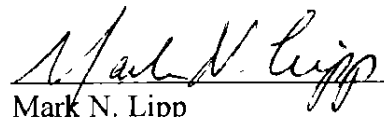
application is apparently blocked due to this pending reconsideration.<sup>4</sup> The application for transfer of control of KVMA-FM from Columbia to Cumulus has been granted, but the parties are unable to close due to contractual commitments and must await the outcome of this proceeding or the application processing. The application for renewal of license for KVMA-FM is due on February 1, 2004, and if the parties do not close before that date they will be delayed for at least another four months during the pendency of the renewal application. Such a delay would be contrary to the public interest because the provision of a first local service to Oil City would be unduly delayed.

WHEREFORE, for the foregoing reasons, the Commission should promptly issue a decision in this proceeding, and should do so no later than January 23, 2004 in order to allow the parties to close before February 1, 2004. In the alternative, the Commission should direct the staff to expeditiously process the implementing application for KVMA-FM.

Respectfully submitted,

CUMULUS LICENSING CORP.  
COLUMBIA BROADCASTING CO. INC

By:



Mark N. Lipp  
J. Thomas Nolan  
Vinson & Elkins, LLP  
1455 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 639-6500

Their Counsel

January 8, 2004

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<sup>4</sup> Cumulus and Columbia have contemporaneously filed a request for expedited action on the application as well. A copy of that request is attached hereto as Exhibit A.

**EXHIBIT A**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
Cumulus Licensing Corp.	)	File No. BPH-20030610ADI
for Minor Change in Licensed Facilities	)	
of Station KVMA-FM, Oil City, Louisiana	)	
Facility ID No. 12414	)	

To: Marlene H. Dortch, Office of the Secretary  
Attn: Chief, Audio Division  
Media Bureau

**REQUEST FOR EXPEDITED ACTION**

Cumulus Licensing LLC<sup>1</sup> ("Cumulus"), transferee of Station KVMA-FM, and Columbia Broadcasting Co., Inc. ("Columbia"), licensee of Station KVMA-FM, by their counsel, hereby request that the Commission take expedited action on the above-captioned application, and, for reasons discussed below, to issue a decision by January 23, 2003. The application is ripe for grant, but has been unreasonably delayed. This delay is contrary to both the Commission's rules and policies and to the public interest.

1. The above-captioned application for Station KVMA-FM was filed to implement a change in community of license for Station KVMA-FM from Magnolia, Arkansas to Oil City, Louisiana pursuant to the *Report and Order* in MB Docket 02-199, 18 FCC Rcd 8542 (2003). A petition for reconsideration of the *Report and Order* is pending. At one time, the filing of a petition for reconsideration would have had the effect of staying an amendment to the FM Table of Allotments. However, since 1996, that is no longer the case. The Commission does not stay the effectiveness of allocations decisions except for good cause shown. *See Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stays of Certain Allotment*

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<sup>1</sup> The name of this entity has changed, effective January 2, 2004

*Orders*, 11 FCC Rcd 9501 (1996). The requirement of “good cause” places a high burden on a party requesting a stay. *Id.*, 11 FCC Rcd at 9506 n. 21. Despite the filing of a request for a stay in that proceeding, the Commission has thus far declined to issue a stay. Accordingly, compliance with the *Report and Order* is mandatory.<sup>2</sup> See 47 C.F.R. § 1.429(k) (“the filing of a petition for reconsideration shall not excuse any person from complying with any rule”).

2. The application to implement the *Report and Order* has been pending since June 10, 2003, several months beyond the normal processing time. The application now appears on the Commission’s list of “Blocked Modification Applications” as of January 1, 2004 on the Commission’s web site.<sup>3</sup> The logical conclusion is that the Commission is withholding action on the application pending the outcome of the rule making proceeding. However, this would be contrary to the Commission’s rules.

3. The Commission decided, for sound policy reasons, that the filing of a petition for reconsideration should not stay the effectiveness of amendments to the Table of Allotments. It did so after conducting a notice-and-comment rule making proceeding in compliance with the requirements of the Administrative Procedure Act, and the rules so adopted have the force of law. See *CBS, Inc v U.S.*, 316 U.S. 407, 417 (1942). The Commission, like any other party, must follow its own rules. See *Way of Life TV Network, Inc. v. FCC*, 593 F.2d 1356, 1359 (D.C Cir. 1979) (“it is a well-settled rule that an agency’s failure to follow its own regulations is fatal to the deviant action”). For the Commission to block grant of the application pending further action in the allotment proceeding would be to create a *de facto* stay where the requirements of a *de jure* stay are not met. To create a *de facto* stay in this manner would conflict with the

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<sup>2</sup> The application specifically recited that the applicant would accept a grant conditioned on the final outcome of the rule making proceeding

<sup>3</sup> See <<http://www.fcc.gov/mb/audio/status/blklst2.html>>

Commission's duly promulgated rules and would be contrary to law. *See Paxton v. Secretary of HHS*, 856 F 2d 1352 (9th Cir. 1988) (agency could not make policy that conflicted with its own duly adopted regulations).

4. Although the Commission has received an informal objection to the grant of this application, Cumulus and Columbia have already shown that the objection is without merit. Indeed, it has been demonstrated that although there are no legal grounds for the informal objection, the opponent has a strong incentive to delay the implementation of the Oil City relocation in order to forestall competition in the Shreveport, Louisiana market. This behavior by potential competitors is the very reason that the Commission changed the rules in 1996 to eliminate the stay of allotment proceedings that had been effective automatically upon the filing of a petition for reconsideration. The Commission reasoned that repeal of the automatic stay provision "is intended to remove the incentive it creates for parties to challenge agency approval of a competitor's modification proposal *simply to forestall institution of new competitive service.*" 11 FCC Rcd at 9502 (emphasis added). However, if a competitor can accomplish the same goal by filing an informal objection, then the repeal of the automatic stay provision has accomplished nothing. Although the informal objection attempts to tie the application to the pending reconsideration of the allotment proceeding, the Commission cannot lawfully do so as discussed above. In order to enforce its policy decisions, the Commission must let parties know that objections like this are ineffective at creating delay. The Commission must promptly process applications that are technically and legally complete and ripe for grant.

5. The application for renewal for KVMA-FM is due on February 1, 2004. Although the application for the assignment of license of KVMA-FM from Columbia to Cumulus has been granted, for contractual reasons the parties cannot close on the transaction

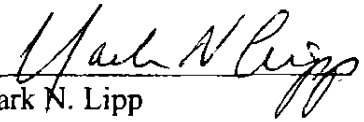
until the above-captioned application to implement the *Report and Order* is granted. As indicated, the application was filed on June 10, 2003, giving the Commission ample time to process and grant the application before the renewal process began. There is still time for the Commission to act. However, if the parties do not close by February 1, the transaction will be further delayed for at least another four months. Such additional delay would be contrary to the public interest.

WHEREFORE, for the foregoing reasons, the Commission should take expedited action on the above-captioned application by January 23, 2003 to enable the parties to close before February 1, 2004.

Respectfully submitted,

CUMULUS LICENSING LLC  
COLUMBIA BROADCASTING CO. INC.

By

  
Mark N. Lipp  
J. Thomas Nolan  
Vinson & Elkins, LLP  
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Their Counsel

January 8, 2004

**CERTIFICATE OF SERVICE**

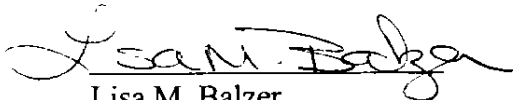
I, Lisa M Balzer, a secretary in the law firm of Vinson & Elkins, LLP., do hereby certify that I have on this 8th day of January, 2004, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Request for Expedited Action" to the following:

\* Peter Doyle, Chief  
Audio Division  
Media Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
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\* Mr. Dale Bickel  
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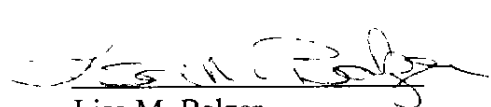
  
Lisa M. Balzer

\* Hand Delivered



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-   
\_\_\_\_\_  
Lisa M. Balzer
- \* Hand Delivered